

**IHSS Stakeholders Meeting
Regulations Development
Meeting Minutes
September 22, 2005**

MEETING ATTENDEES

- See Attachment A

DOCUMENT HANDOUTS

IHSS stakeholders meeting participants were provided with the following documents upon arrival:

- Meeting Agenda
- 9 Month Work Plan
- Draft Regulations for IHSS in the Workplace
- Draft Regulations for Quality Assurance Variable Assessments
- Draft Regulations for Protective Supervision Form
- Draft Regulations for State and County Quality Assurance Process
- Draft IHSS Plus Waiver – Preliminary Regulation Outline
- Draft Regulations for AB 1682 Employer of Record

OPENING REMARKS

Meeting Co-Chaired by Eileen Carroll (CDSS Adult Programs Operations Bureau Chief) and Janice Lindsay (San Bernardino County Dept. of Aging and Adult Services, Staff Analyst II).

Eileen Carroll welcomed the workgroup members and went over the progress made so far. She discussed the regulation packages that are in the process of being implemented through the subcommittees and thanked the subcommittees for their work. Eileen also informed the group that we were on target with the 6-month work plan and that we would be discussing the 9-month work plan later in the meeting.

REVIEW OF AGENDA

Janice Lindsay went over the agenda for the meeting and talked about the following meeting objectives:

- To recap the regulations that were developed and discussed within the last 3 workgroup meetings and to discuss the next steps in the regulatory process.
- Review the subcommittee's draft regulations for AB 1682 Employer of Record for Collective Bargaining Purposes and the draft IHSS Plus Waiver regulations and to obtain input from the workgroup on these regulations.
- Review the future work plan.

IHSS Stakeholders Meeting
Regulations Development
Meeting Minutes
September 22, 2005

Eileen then gave a general overview of the regulation process, the required procedures and time frames to implement the regulations, etc. She said 4 of the regulation packages will be moving on fairly quickly. The packages will be submitted to the Office of Regulation Development (ORD). ORD follows the procedures required in statute. They will mail a notice for the public to view the regulations. A public hearing will follow for comments. The public is given a 45 day comment period. CDSS will respond to comments in writing. After the public hearing process, the regulations are submitted to the Office of Administrative Law (OAL), which is the agency that must ensure that the regulations meet the Administrative Procedures Act (APA) standards. The regulations are then forwarded to the Secretary of State Office where they are assigned an effective date. She added that the process can take up to one year.

Marty Omoto asked if any of the packages are emergency regulations or if a decision was made on the IPW regulations as emergency.

Eileen said the QA regulations are emergency regulations as provided for in SB 1104. However, the statute did not provide for an emergency clause for the IPW regulations which should be completed by the end of 2006.

DISCUSSION

Recap of June 24 meeting

Eileen talked about the draft IHSS in the Workplace regulations that were discussed during the June 24 meeting. She said CDSS received a list of questions and comments that highlighted 4 specific areas of the regulations and the following three issues were addressed in the regulations.

- Whether IPW recipients are to be included in IHSS in the Workplace.
- Whether transportation to the workplace would be included.
- The concern that there could be an overlap of IHSS hours and ADA hours – specifically that the inclusion of the ADA as another resource for services may lead to confusion for the social workers who are not trained in ADA requirements.

Eileen gave a summary of the comments and the changes CDSS made. 1) CDSS added a reference that provides for IPW recipients to be eligible to transfer IHSS services to the workplace as well as a reference that defines the IPW program. 2) CDSS also added a section to explain that IHSS does not pay for transportation to a workplace. 3) CDSS addressed the issue regarding ADA hours, by providing specific examples of reasonable accommodation which cannot be confused with services that are covered by IHSS in the Workplace. She concluded the summary by adding that the IHSS in the Workplace regulations are not emergency regulations however, it is

IHSS Stakeholders Meeting
Regulations Development
Meeting Minutes
September 22, 2005

expected that these regulations would move forward; so, if there are additional concerns, the participants should notify CDSS.

Eileen then went on to recap the Quality Assurance draft regulations. She explained that there were minor technical changes made for clarity and no questions or comments were raised on these regulations.

IHSS Plus Waiver Regulations

The meeting was then turned over to Jan Howland (CDSS) and Janice Lindsay who are the co-chairs for the IPW subcommittee. Jan went over the changes made to the previous draft IPW regulations package. She thanked Janice and the subcommittee members and then proceeded to go over the new regulations and told the workgroup that this would be the final package that will be submitted to ORD. She explained the IPW regulations mirrored the IHSS regulations and that the changes are the underlined text. Jan proceeded to go over the underlined text which consists of eligibility criteria, share of cost, program content, application process (specifically .72 which describes presumptive disability as opposed to IHSS' presumptive eligibility) and the needs assessment standards.

Stormaliza Powmacwizalord made a comment about getting the word out to people about the Waiver program. Her concern is that this is a new program and people won't know about it, especially deaf people like herself. Eileen explained that the State had notified existing recipients of IHSS and they were sent a letter about the IHSS Plus Waiver program in June 2006; they were told that they have a choice of receiving services under the Waiver. Another concern was raised about the eligibility process. Janice Lindsay said eligibility is under a big umbrella and the county workers must determine the appropriate program needed for each individual. Stormaliza stated that social workers need to explain to deaf people what program they're in. Janice explained that the IPW is different than the normal waiver and that there are certain eligibility criteria for the IPW program. She reiterated that a letter was sent out by the State to the people who meet the criteria.

Bill Miller asked if IPW recipients can also receive services from another waiver, i.e. Home and Community Based waiver services. Jan said yes, they just can't receive services from another 1115 waiver.

A comment was made about the Personal Care Services Program (PCSP), protective supervision and domestic and related only services. Eileen explained protective supervision and domestic and related only services are now eligible services under the Medicaid Plan for the State of California within the PCSP program.

**IHSS Stakeholders Meeting
Regulations Development
Meeting Minutes
September 22, 2005**

This part of the meeting was concluded; Jan let the group know that any additional comments should be emailed to her by October 6, 2005. She gave her email address Janice.howland@dss.ca.gov.

AB 1682 Employer of Record for Collective Bargaining Purposes

After the morning break the meeting reconvened. Eileen recapped the first half of the meeting then handed it over to Charissa Miguelino and Kevin Fiala to discuss the draft regulations for AB 1682 Employer of Record for Collective Bargaining Purposes. Eileen informed the workgroup that the Employer of Record regulations are not emergency regulations so there is no deadline we have to meet. It's on the priority list because regulations are necessary to implement the statutes of AB 1682 and stakeholders did identify procedures that require clarification in regulations.

Charissa began by thanking the subcommittee members and her co-chairs, Sally Nelson and Debi Thomson. She also thanked Karen Keesler of California Association of Public Authorities (CAPA) who reviewed the package and submitted several comments on behalf of CAPA. She talked a little bit about the subcommittee process and explained since this package is so large; CDSS had to have two subcommittee meetings to go over the entire package. She added that we had received CAPA's comments earlier in the week and were able to use some, while others required further discussion. Charissa also said because the regulations package is large and there is much interest in the feedback on the comments that were received, there will be another subcommittee meeting scheduled after all the comments are incorporated and another draft is put together. She added that any additional comments or suggested language should be sent to Kevin Fiala by October 13, 2005. His email address is Kevin.Fiala@dss.ca.gov.

Kevin then began his presentation of the regulation package starting with the definitions section. He added that a lot of the changes are minor – most changes consist of clean-up language. The comments made throughout the presentation are as follows:

Special Definitions Section

Comment: Isn't consumer referenced in statute under the advisory committee, both for employer for collective bargaining and Public Authority, as a current or past user of IHSS and is that why there are different definitions for recipient and consumer?

- **Response:** The subcommittee agreed to delete consumer and roll it up under recipient for simplicity. CDSS is aware of the separate definitions and decided to eliminate confusion by remaining consistent within the IHSS regulations; the definition should remain the same. We will follow up on this issue if it's necessary to make a distinction.

**IHSS Stakeholders Meeting
Regulations Development
Meeting Minutes
September 22, 2005**

Comment: Under the definition of employer, CAPA would like to delete “employment conditions” in the sentence for “matters relating to employment conditions and employer-employee relations” because some things are potentially subject to collective bargaining that are conditions of employment but other things like the situation of a consumers home is something that the PAs have no control over.

- **Response:** CDSS agreed to take out the “employment conditions” as part of the definition.

Comment: Under the employer definition, part B, the phrase “otherwise known as the employer of record” is misleading; it is used in a different context.

- **Response:** It is used to describe the employer for collective bargaining purposes. The term “employer of record” is used for convenience purposes. CDSS thought it would be easier and less wordy to use this term instead of “employer for collective bargaining purposes.”

Comment: CAPA would like to redefine the definition for “licensed health care professional” by broadening the definition to include other professions used in the IHSS program.

- **Response:** The only place “licensed health care professional” is used in the regulations is under paramedical services and, if so, the definition should refer to a medical doctor. This issue will be looked at closer and reviewed with our legal division.

CDSS Comment: The subcommittee agreed to delete personal attendant from the definitions but CDSS has since learned counties still use personnel attendants. This is the reason it is still in the definitions and we will be investigating this issue further. The subcommittee also discussed expanding the definition of the PA but because the definition was taken from statue CDSS did not expand it.

Application Process Section

The only addition made to this section is if a county has a PA/NPC they will refer clients to those entities. No comments from the workgroup were provided to this section.

Responsibilities Section

Comment: CAPA offered alternative language for Manual of Policy and Procedures (MPP) 30-760.26 that states “the PA/NPC may assist recipients by informing them of their responsibilities as employers.”

**IHSS Stakeholders Meeting
Regulations Development
Meeting Minutes
September 22, 2005**

- **Response:** CDSS noted the language.

Comment: A request was made to explain the term “standards of compensation” under MPP 30-760.17.

- **Response:** The recipient has the responsibility for advance pay and share of cost so they do have to follow standards of compensation.

Comment: Then it should say that the recipient has the responsibility for share of cost and advance pay instead of the term “standards of compensation.” The term is very broad and could be used in many different ways.

- **Response:** CDSS will provide review this to determine if further clarification is necessary.

CDSS comment: A confidentiality responsibility was added for the recipient/applicant in regulation that was discussed during a subcommittee meeting. In regulation, confidentiality for providers is applied to the PA/NPC but is not required of the recipient/applicant.

Individual Provider Compensation Section

Comment: CAPA does not agree with the language in MPP 30-764.13 that states the county is responsible for the rate of compensation. CAPA suggested language that says county staff is responsible for the authorization and number of hours and the employer of record is responsible for the amount of compensation. (A comment was added that the social worker determines the amount of compensation, too and that the PA determines the amount for collective bargaining purposes.)

- **Response:** MPP 30-764.13 will need to be broken out further.

Comment: Would like more discussion to be made about the MPP 30-764.25 section that refers to non live-in providers (personal attendants) because it brings up issues with overtime and is riddled with legal issues.

- **Response:** There will be further discussions on this issue.

Comment: If MPP 30-764.25 is not expanded; the term “work week” should be defined.

Cost Limitations Section

Comment: MPP 30-765.111 should also reflect the IPW program.

**IHSS Stakeholders Meeting
Regulations Development
Meeting Minutes
September 22, 2005**

- **Response:** The IPW program has a 195 hour and 283 hour distinction the same as IHSS, where as, the PCSP does not. All individuals in the PCSP can receive up to 283 hours a month.

Comment: MPP 30-765.2 states the statewide wage rate is determined by the State Budget Act. This is incorrect; the statewide wage rate is not determined by the State Budget Act. Also, in the handbook section where it states the taxes and benefits are in addition to the statewide wage rate, it should say “statewide wage rate established by the employer of record.”

- **Response:** The approval of the wage rate isn’t just the PA or whoever is negotiating the wage rate. It is a multi-step process that needs to be approved by the CDSS and the Department of Health Services. CDSS will expand on the process.

Delivery Modes and Methods Section

Comment: For MPP 30-767.2: in some counties like Los Angeles, San Francisco and San Luis Obispo, the majority of the governing board are consumers, so the board acts as the advisory committee. There should be language that says what the advisory committee does and their processes and to make sure it also applies to the governing board.

- **Response:** CDSS will look in to the issue but currently the language follows statute.

Comment: For MPP Section 30-767.23 - county boards of supervisors have said specifically that the advisory committee hires the PA director, interviews, etc. The regulations should reflect that the advisory committee has this type of authority.

- **Response:** This is a county issue and not appropriate for State regulations.

Comment: CAPA is not comfortable with the language in MPP 30-767.251, CAPA believes it is very important that the advisory committee knows how much of an allocation they have and what they can spend it on and make it very clear that the money is for the advisory committee and not for county functions. Their suggested language is “Advisory committees may choose to be staffed by county employees or by other persons or entities. County, PA or NPC employees who support advisory committee activities may charge, with advisory committee approval, against the IHSS advisory committee allocation provided corresponding adjustments to county payroll are made.”

IHSS Stakeholders Meeting
Regulations Development
Meeting Minutes
September 22, 2005

- **Response:** CDSS will need to research this issue further.

Comment: I would like to reiterate the issue of deleting the phrase “employment conditions” when the employer definition is used which was discussed earlier in the meeting. I would like to make sure the language is consistent throughout the regulations.

- **Response:** We’ll review the regulations to make certain that wherever this definition is used that it remains consistent within the regulations.

Comment: Do counties have to follow the advice of the advisory committee?

- **Response:** They’re an advisory committee; it is considered advice not a requirement.

Comment: On the bottom of page 26, it says “the county must have a homemaker available.” Shouldn’t that be homemakers?

- **Response:** Yes, thank you. We’ll make the revision.

Comment: You’re saying under MPP 30-767.36, no county is required to offer any specific mode of service delivery.

- **Response:** It should be any specific method of service; it says mode or method and it should just say method.

Comment: All counties with over 500 cases are required to offer the IP mode of service. That was originally under MPP 30-767.361 but it’s no longer there.

- **Response:** It was removed when the modes and methods sections were broken out. It is explained in this manner so the modes are listed first; then there is the caveat that the counties with more than 500 cases will have to offer the IP mode, if requested; and then in the next section, the methods of delivery are described.

Comment: I agree with MPP 30-767.4 but would like to suggest that you re-insert MPP 30-767.361 so that it includes the exception of counties with over 500 cases in both the modes and method sections.

- **Response:** We’ll insert the reference.

Comment: There is a lot of confusion about MPP 30-767.411 which says employees of the PA shall not be employees of the county. Does that mean that the PA can’t use county counsel? There are a lot of differences in the way the PAs are structured. We

IHSS Stakeholders Meeting
Regulations Development
Meeting Minutes
September 22, 2005

want to make sure that if the PA is using county counsel, accounting, or an elevator operator and operating under the interagency agreement or contract that the employee has to act in the best interest of the PA which may not be in the best interest of the county.

- **Response:** We understand your concern and appreciate your comment. We are reviewing this language. The issue that needs to be addressed is whether it is a conflict of interest; we will need to research this issue further.

Comment: I want to add 4 more comments that are big ones. The first is the mandate to the PA to provide training to consumers on how to schedule their workers to avoid overtime. This is a very controversial new mandate not supported by anything in statute. The second issue is the handbook section that deals with the PA background checks and the regulation that says the State would not share in the cost for criminal background checks. We have pending legislation on that and I think it is a really bad step for the administration to signal here that those dialogs have been closed. The third comment is that we provided suggestions to incorporate and deal with the timing of the rate approval by the DHS. We also suggested language that the State has the authority in regulation to get information from CAPA for the annual report to the legislature in exchange for CAPA to have the ability to provide input with other stakeholders as to what is contained in the report. We think this would be a very helpful tool to educate the legislatures as to what is going on and to cover priority areas for stakeholders. The last item is data sharing of social security numbers (SSN). There has been some confusion about whether PA's are allowed to provide SSNs to unions. We've provided language that says we can provide SSNs to an exclusive employee representative if it's necessary and relevant to the representation of IHSS workers.

- **Response:** As a follow up for your information, the language about the SSN is on page 35. The language regarding the report to the legislature is under .44 on page 33 and we added proposed language in regulation about soliciting information from the PA and NPC for the report. The language regarding criminal background checks is on page 32 and the language about training for recipients is on page 33.

Comment: Is there anything in the regulations that provides for the sharing of CMIPS information between the county and the PA?

- **Response:** There is suggested language that was given to us but we have not had an opportunity to review it yet.

**IHSS Stakeholders Meeting
Regulations Development
Meeting Minutes
September 22, 2005**

After the final comments, Eileen reiterated to the Regulations Workgroup that the period of time to provide comments ends on October 13th, (*this was later extended thru October 27, 2005), and then the State will need some considerable time to review the comments and discuss any issues with the Legal staff to ensure that the regulations are appropriate and can be substantiated by state statutes. An Overall IHSS Regulations subcommittee meeting/conference call will be scheduled after all the comments are incorporated and the final draft is put together.

Eileen then concluded the meeting by going over the draft 9-month work plan. She said it is anticipated the workgroup will end in June 2006. This would cover the timeframes under Senate Bill (SB) 1104. She went over which regulation packages will be moving on to ORD. The 5 regulation packages include: Variable Assessments, Protective Supervision form, State and County Quality Assurance Procedures, IHSS in the Workplace and the IPW program. She discussed which regulations will be worked on next, along with the timeframes for each.

Next Meeting

Date: anticipated in January/February 2006

Location: To be determined

**IHSS Stakeholders Meeting
Regulations Development
Meeting Minutes
September 22, 2005**

Attachment A

Attendees:

Agee, Jovan	UDW
Avalino, Cindy	Monterey County
Bravo, Anna	Sacramento County
Carroll, Eileen	CDSS
Celestine, Deborah	Alameda County
Dancy, Jean	Sacramento County
Duchen, Wendy	SEIU Local 434B
Eszlinger, Martha	CDSS
Fiala, Kevin	CDSS
Field, Ken	Shasta County Public Authority
Gonzales, Desi	CDSS
Granados, Fred	CDSS
Harris, Robert	
Hicks, Randy	CA Senior Legislature
Hindsman, Wayman	CDSS
Howland, Jan	CDSS
Keesler, Karen	CA Assoc of Public Authorities
Koepp, Brian	CDSS QA
Kubachi, Stan	Sacramento County DA
Lindsay, Janice	San Bernardino County
Locke, Charlene	DDS
Miguelino, Charissa	CDSS
Miller, Bill	Butte County
Nelson, Sally	Sacramento County
Oddo, Jarrett	Sacramento County
Omoto, Marty	CDCAN
Powmacwizalord, Stormaliza	Consumer
Roberts, Linda	
Ruoff, Jennifer	CDSS
Sacheli, Angelo	Marin County Public Authority
Schwartz, Kathleen	Sacramento County
Siminson, Rick	Sacramento County Public Authority
Smith, Richey	
Stevens, Loretta	Homecare Council
Sutherland, Ann	UDW
Torricella, Susana	DHS